

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE MITCHELL LAW GROUP, et al.,

No. C-09-3466 MMC

Plaintiffs,

v.

OCC VENTURE LLC, et al.,

Defendants.

**ORDER GRANTING PLAINTIFFS' EX  
PARTE APPLICATION FOR RELIEF  
FROM ORDER AND APPLICATION TO  
FILE OPPOSITION TO SUMMARY  
JUDGMENT MOTION; SETTING  
BRIEFING SCHEDULE AND HEARING  
ON DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Before the Court is plaintiffs' "Ex Parte Application for Relief from Order and Application to File Opposition to Summary Judgment Motion," filed May 28, 2010.

Defendants OCC Venture LLC and Shorenstein Realty Services, L.P. have filed opposition thereto. Having read and considered the papers filed in support of and in opposition to the application, the Court rules as follows.

In support of the application, plaintiffs submit the declaration of their counsel, who states therein she had delegated to her then assistant the calendaring of the date on which opposition to defendants' motion was due, and that said assistant failed to read the applicable Civil Local Rule. Although a failure to "read an applicable rule," here, Civil Local Rule 7-3(a), has been characterized as "one of the least compelling excuses that can be offered," see Pincay v. Andrews, 389 F.3d 853, 859 (9th Cir. 2004), in this instance, the

1 delay in court proceedings occasioned by counsel's assistant's oversight is minimal,  
2 defendants have failed to identify any prejudice they would suffer if plaintiffs were allowed  
3 to file a late opposition, and there is no showing plaintiffs have acted or are acting in bad  
4 faith. See id. at 858-60 (holding where plaintiff failed to file timely notice of appeal after  
5 plaintiff's counsel relied on paralegal who had "negligently" misinterpreted applicable  
6 federal rule, trial court did not err in affording plaintiff leave to file untimely notice of appeal  
7 where all other "factors militate[d] in favor of excusability").

8 Accordingly, the application is hereby GRANTED.

9 In light of the above ruling, the Court sets the following schedule:

- 10 1. No later than June 23, 2010, plaintiffs shall file an opposition that conforms to the  
11 requirements set forth in the Local Rules of this District.<sup>1</sup>  
12 2. No later than July 2, 2010, defendants shall file any reply.  
13 3. Unless the parties are hereafter notified to the contrary, the hearing on  
14 defendants' motion shall be on July 16, 2010, at 9:00 a.m.

15 **IT IS SO ORDERED.**

16  
17 Dated: June 14, 2010

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MAXINE M. CHESNEY  
United States District Judge

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27 <sup>1</sup>In conjunction with the instant application, plaintiffs have submitted a "proposed"  
28 opposition that exceeds the twenty-five page limit set forth in the Local Rules of this District.  
See Civil L.R. 7-3(a) (providing "opposition to a motion" may "not exceed 25 pages of text").  
Accordingly, plaintiffs may not file their opposition in the form proposed.